

(30,313)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1924

No. 375

KANSAS CITY STRUCTURAL STEEL COMPANY,
PLAINTIFF IN ERROR,

vs.

THE STATE OF ARKANSAS FOR THE USE AND BENEFIT
OF ASHLEY COUNTY

IN ERROR TO THE SUPREME COURT OF THE STATE OF ARKANSAS

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[fol. 1] **IN CIRCUIT COURT OF ASHLEY COUNTY**

PETITION FOR AND ORDER ALLOWING APPEAL

Comes the defendant, the Kansas City Structural Steel Co. and prays an appeal herein to the Supreme Court of Arkansas.

W. G. Riddick, Atty. for Deft.

3/23/23, Appeal granted. W. P. Sadler, Clerk, by C. R. Stevenson, D. C.

[fol. 2] **CAPTION—Omitted**

[fol. 3] **IN CIRCUIT COURT OF ASHLEY COUNTY**

STATE OF ARKANSAS for the Use and Benefit of **Ashley County,**
Plaintiff,

vs.

KANSAS CITY STRUCTURAL STEEL COMPANY, Defendant.

BILL OF COMPLAINT—Filed August 29, 1921

Comes the State of Arkansas for the use and benefit of Ashley County, Arkansas, by J. R. Wilson, Prosecuting Attorney within and for the Tenth Judicial Circuit of Arkansas, and represents to the court that the Kansas City Structural Steel Company is a Missouri Corporation, authorized to do business in the State, and that at the times complained of the said Kansas City Structural Steel Company was not authorized to do business in Arkansas.

That on the 3rd day of August, 1921, and at all times prior thereto the said Kansas City Structural Steel Company, a corporation engaged in the building of bridges, had not complied with the laws of Arkansas with reference to qualifying as a foreign corporation to do business in the State of Arkansas.

That prior to the said 3rd day of August, 1921, the said Kansas City Structural Steel Company did bid on bridge work in the Wilmot Road District in Ashley County, Arkansas, and the bid of said Kansas City Structural Steel Company was accepted, and said Kansas City Structural Steel Company contracted with the said Wilmot Road District for the building of a bridge in the said Wilmot Road District in Ashley County, Arkansas, without having complied with the law with reference to the qualification of a foreign corporation to do business in the State of Arkansas, contrary to the statutes in such cases made and provided and against the peace and dignity of the State of Arkansas.

[fol. 4] Wherefore, premises considered, the plaintiff prays the Court that a fine and judgment of not less than \$1,000.00 be assessed against said Kansas City Structural Steel Company, and for such fur-

ther fine and judgment as the plaintiff may be entitled to recover under the law in such cases made and provided.

J. R. Wilson, Prosecuting Attorney within and for the 10th Judicial Circuit of Arkansas.

Jurat showing the foregoing was duly sworn to by J. R. Wilson omitted in printing.

[File endorsement omitted.]

IN CIRCUIT COURT OF ASHLEY COUNTY

SUMMONS AND SHERIFF'S RETURN

Summons issued on the Kansas City Structural Steel Company August the 29th, 1921.

Summons returned served on A. F. Ealey, manager at Wilmot for the Kansas City Structural Steel Company the 31st day of August, 1921.

L. W. Dew, Sheriff, by P. M. Stanley, D. S.

[fol. 5] IN CIRCUIT COURT OF ASHLEY COUNTY

[Title omitted]

ANSWER

Defendant denies that at the time mentioned in the complaint it was a Missouri Corporation, or that it was not authorized to do business in the state of Arkansas.

Defendant denies that on the 3rd day of August, 1921, or at all times prior thereto, defendant had not complied with the laws of the State of Arkansas with reference to qualifying as a foreign corporation to do business in this State.

Defendant denies that on the 3rd day of August, 1921, it entered into a contract with the Wilmot Road District in Ashley County, Arkansas for the building of a bridge in said Wilmot Road District in Ashley County, Arkansas; and denies that it bid upon or entered into said contract without having complied with the laws of the State of Arkansas with reference to the qualification of a foreign corporation to do business in this State.

Defendant denies that it has at any time engaged in business in the State of Arkansas in violation of any of the laws of said State with reference to the qualification of a foreign corporation to do business therein, and denies that the plaintiff is entitled to recover the sum of \$1,000.00 or any other sum for the use and benefit of Ashley County in this cause.

Further answering, defendant says that if it engaged in any business whatever in the State of Arkansas prior to its compliance with the laws of the said State with regard to foreign corporations, [fol. 6] such business was interstate commerce, and as such not subject to control or regulation by the State of Arkansas; that the law of the State of Arkansas under which this action is brought, namely Section 1825 to 1832, inclusive, of Crawford & Moses' Digest of the Laws of Arkansas, if held to apply to defendant's business in the circumstances of this case, is repugnant to the commerce clause of the Constitution of the United States and therefore unconstitutional.

Wherefore, having fully answered, defendant prays that it be dismissed, with costs and all other proper relief.

Coleman, Robinson & House, Attorneys for Defendant.

[fol. 7] IN CIRCUIT COURT OF ASHLEY COUNTY

[Title omitted]

JUDGMENT

Now on this the 7th day of September, 1922, a day of the August term 1922 Ashley Circuit Court, comes on the above styled cause for trial a jury being waived, and the case being submitted to the court upon the deposition of J. C. Kistler and an agreed statement of facts and the court being well and sufficiently advised in the premises doth find that the defendant, Kansas City Structural Steel Company, is a Missouri Corporation, duly authorized to do business in the State of Missouri, but was not authorized to do business in the State of Arkansas at the time of the execution of the contract between Kansas City Structural Steel Company and the Wilmot Road District for the construction of a bridge in the Wilmot Road District, in Ashley County, Arkansas, and that said Kansas City Structural Steel Company was not legally authorized to do business in the State of Arkansas at the time three shipments of steel were made by the Kansas City Structural Steel Company to itself at Wilmot, in Ashley County, Arkansas, and that said shipments contained material for use in the building of said bridge, and that said material was used in the construction of said bridge. The said Kansas City Structural Steel Company without qualifying to do business under the laws of Arkansas executed a contract with the Wilmot Road District in Ashley County, Arkansas, to construct a bridge across Bayou Bartholomew, and the execution of said contract and the [fol. 8] action of the said Kansas City Structural Steel Company, a foreign corporation, in shipping to itself bridge material for delivery at Wilmot, Arkansas, constituted doing business in the State of Arkansas without authority of law, and the court doth find that on account of the failure of the said Kansas City Structural Steel Company to obtain permission to do business under the laws of

Arkansas, in the manner prescribed for foreign corporations, has subjected itself to a fine because of said violation of the law and said Kansas City Structural Steel Company, a foreign corporation, ought to be, and is fined in the sum of One Thousand (\$1,000.00) Dollars.

It is therefore ordered, considered, and adjudged that the plaintiff, State of Arkansas for the use and benefit of Ashley County, do have and recover of and from said Kansas City Structural Steel Company, a foreign corporation, the sum of One Thousand (\$1,000.00) Dollars, in lawful money of the United States of America as fine and judgment and all costs in this suit expended, and that execution issue thereof."

To which finding and judgment of the court the defendant at the time excepted and asked that its exceptions be noted of record, which was accordingly done.

And thereafter on the same day the defendant filed its motion for a new trial herein as follows, to wit:

[fols. 9 & 10] IN CIRCUIT COURT OF ASHLEY COUNTY

[Title omitted]

MOTION FOR A NEW TRIAL AND ORDER OVERRULING SAME

Comes the defendant and moves the court to grant it a new trial herein and for cause states:

1st. That the findings and judgment of the court are contrary to the law.

2nd. That the findings and judgment of the court are contrary to the evidence.

3rd. That the findings and judgment of the court are contrary to both the law and the evidence.

Wherefore, premises considered, defendant prays the court to set aside the judgment rendered herein and to grant it a new trial.

J. W. House, Jr., Attorney for Defendant.

The Court refused to grant the defendant a new trial and upon the 7th day of September, 1922, overruled said motion. To which ruling of the court in refusing to grant it a new trial the defendant at the time excepted and prayed an appeal to the Supreme Court, which was granted and the defendant given 120 days in which to file its bill of exception.

[fol. 11] IN CIRCUIT COURT OF ASHLEY COUNTY

[Title omitted]

Bill of Exceptions—Filed September 7, 1922

Be it remembered that on the 7th day of September, 1922, the same being a day of August 1922 term of this Court for the year 1922, the above entitled cause having been reached on its regular call, the plaintiff appeared by J. R. Wilson, Prosecuting Attorney, and the defendant appeared by J. W. House, Jr., and both announced ready for trial, thereupon a jury being waived the cause was submitted to the Court upon the deposition of J. C. Kistler and an agreed statement of facts.

The deposition of J. C. Kistler was then read in evidence before the court and is in words and figures as follows, to wit:

"Caption

The deposition of J. C. Kistler, taken on the 10th day of June, 1922, at the office of B. B. Staton, justice of the peace at Wilmot, Ashley County, Arkansas, by agreement, to be read as evidence in an action between the State of Arkansas for the use of Ashley County, plaintiff, and the Kansas City Structural Steel Company, defendant, pending in the Ashley Circuit Court.

[fol. 12]

[Title omitted.]

STIPULATION RE TESTIMONY

It is agreed by the parties hereto that the deposition of J. C. Kistler, Agent of the Missouri Pacific Railroad Company, at Wilmot, Arkansas, may be taken on the interrogatories and the cross-interrogatories hereto attached, before any officer authorized to administer oaths. All formalities as to caption and certificate is hereby waived and exceptions are expressly saved as to competency, relevancy and admissibility.

Witness our hands on this the — day of May, 1922.

J. R. Wilson, Prosecuting Attorney. W. G. Riddick, Attorney for Kansas City Structural Steel Company.

DIRECT INTERROGATORIES TO BE PROPOUNDED TO J. C. KISTLER

1. Q. State your name, your age, your place of residence?
A. J. C. Kistler, forty years, Wilmot, Arkansas.
2. What position, if any, did you hold with the Missouri Pacific Railroad Company during the year 1921?
A. Agent.

3. Please examine your records and state whether the Kansas City Structural Steel Company, prior to August 17, 1921, made any [fol. 13] shipments of materials to Wilmot, Arkansas, and if so, how many?

A. Yes, sir, two.

4. Q. Please make a copy of your record as to each shipment, if any was made, by the Kansas City Structural Steel Company and show in your record the complete history of all of said shipments, giving the shipper, the consignee, the commodity shipped, station from which said commodity was shipped; the place to which said commodity was shipped, the date of shipment, and all other facts pertaining to such shipment, mark it "Exhibit "A", and make it a part of this, your deposition.

A. Am attaching two freight bills giving all of this information.

5. Q. If there are any other shipments made prior to August 17, 1921, make a copy of your records showing same as asked for in the preceding question, mark it Exhibit "B" and make it a part of your deposition?

A. Copies of (Exhibit "B") attached.

6. Q. Please state whether any other shipment was made by or for Kansas City Structural Steel Company, either as shipper or consignee. Make a copy of your record as asked for in the preceding question, mark it Exhibit "C" and make it a part of this deposition. If any other shipments were made prior to August 17, 1921, make a copy of your record with reference to the same, if the Kansas City Structural Steel Company was the shipper or consignee, and mark such records as Exhibits "D", "E", "G", etc. until you have shown all of the shipments made by the Kansas City Structural Steel Company as shipper to Kansas City Structural Steel Company as consignee?

[fol. 14] A. Shipped by K. C. S. S. Company to same records attached E-B No. 19 & 153.

7. Q. If there were any shipments made prior to August 17, 1921, of which you are not able to find a record in your office, please state whether the record is lost or mislaid and can't be found, and if so, state from your personal knowledge as far as you can remember all the facts pertaining to such shipment on which the record is lost or mislaid?

A. There was one more car of steel shipped by them to themselves, but I am unable to find a record of it.

8. Q. Please state any other facts that are reflected by your records showing shipments made by the Kansas City Structural Steel Company, or consigned to the Kansas City Structural Steel Company, at Wilmot, Arkansas, and if there are any facts that you know of your own personal knowledge that are not reflected by the records pertaining to the shipments, please state such facts as well?

A. All facts known—all stated.

J. C. Kistler, Agent Missouri Pacific Railroad Company.

CROSS-INTERROGATORIES

No. 1. State when you became agent for the Missouri Pacific Railway Company at Wilmot.

A. March 23, 1910.

No. 2. Were you agent for said Company and on duty as such agent upon the arrival at your station of any of the shipments about which you are asked or which you may testify?

[fol. 15] A. Yes, sir.

No. 3. Have you any information about the matters concerning which you are asked to testify on the direct examination except that secured from the records in your office?

A. No, sir.

No. 4. Have you these records before you when testifying?

A. Yes.

No. 5. Did you personally keep these records? If not, who did keep them?

A. Personally kept by me.

J. C. Kistler, Agent Missouri Pacific Railway Company.

[fol. 16] EXHIBIT "A" TO TESTIMONY OF J. C. KISTLER

Form 1151. Copy. 8-20. 50M. P. S.

Freight Bill

Missouri Pacific Railroad Company

Station 5717, Wilmot, Ark., July 21, 1921.

Consignee: Kansas City Structural Steel Co.

Freight Bill No. 153.

Destination: —.

Route (point of origin to destination): —.

To Missouri Pacific Railroad Co., Dr., for Charges on Articles Transported

Way-bill from Kansas City, Mo.	Way-bill date and No. 7/- 14/21—8450	Full Name of Shipper K. C. S. S. Co.	Car Initial & No. Original Car Initial and No.: —.
Point and date of shipment: —.	Reference: Con- nection Line.	Reference: Pre- vious way-bill	

Number of pack- age, articles, and marks	Weight	Rate	Freight	Advances	Total
3 Cans Bridge Paint.	200	111½	227	....	....
		Total....	....	....	....

Flat to Wood.

Jkto.

Total prepaid, \$2.27.

Received payment 7-22, 1921. J. C. Kistler, Agent.

For use at Junction points on freight subject to connection line settlement. (For prepaid city shipments Agent must write or stamp "Prepaid" in total column and stamp date delivered instead of receipting bill.)

[fol. 17] EXHIBIT "B" TO TESTIMONY OF J. C. KISTLER

Form 1151. Copy. 8-20. 50M. P. S.

Freight Bill

Missouri Pacific Railroad Company

Station, Wilmot, Ark., July 2, 1921.

Consignee: Kansas City Structural Steel Co.

Freight Bill No. 19.

Destination: ———.

Route (point of origin to destination): ———.

To Missouri Pacific Railroad Co., Dr., for Charges on Articles Transported

Way-bill from	Way-bill date	Full Name of	Car Initial &
Argentina,	and No. 6/27	Shipper K. C.	No.
Kansas	—Mt. 1829.	S. S. Co.	Frisko 85174
Point and date	Reference: Con-	Reference: Pre-	Original Car
of shipment:	nection Line.	vious way-bill.	Initial and
———.			No.

Number of pack-					
age, articles, and marks	Weight	Rate	Freight	Advances	Total
Structural Steel....	41,300	.....	7,641	189 98	....
		Total....	....	....	....

Total prepaid, \$266.39.

Received payment 7/4, 1921. J. C. Kistler, Agent.

For use at Junction Points on freight subject to connection line settlement. (For unpaid city shipments — must write or stamp "Prepaid" in total column and stamp date delivered instead of receipting bill.)

[fol. 18]

CLERK'S CERTIFICATE

STATE OF ARKANSAS,

County of Ashley:

I, B. B. Staton, Justice of the Peace for Ashley County, do certify that the foregoing deposition of J. C. Kistler was taken before me and was read to and subscribed by him in my presence, at the time and place and in the action mentioned in the caption, the said J. C. Kistler having been first sworn by me that the evidence he should give in the action should be the truth, the whole truth and nothing but the truth, and his statements reduced to writing by him in my presence, neither party in person or by attorney being present at the examination.

Given under my hand this the 10th day of June, 1922.

B. B. Staton, Justice of the Peace.

J. P. Fees, \$2.00.

And the following agreed statement of facts was then introduced and read to the court, which is in words and figures as follows, to wit:

[fol. 19]

[Title omitted]

AGREED STATEMENT OF FACTS

It is agreed by and between the parties plaintiff and defendant hereto that the following shall be treated and considered as facts:

The Kansas City Structural Steel Company is a corporation organized under the laws of the State of Missouri. On May 3, 1921, it executed a contract with the Wilmot Road District for the construction of a steel bridge across Bayou Bartholomew, near the town of Wilmot, in the County of Ashley, State of Arkansas. The contract was signed at Hamburg, Ashley County, Arkansas, by representatives of the contracting parties and contained a provision that it should not become effective until a bond to secure its faithful performance had been executed by the Kansas City Structural Steel Company.

This bond was executed in Kansas City on May 5, 1921.

On June 14, 1921, the Steel Company sublet to the Yancy Construction Company of Abilene, Kansas, a partnership composed of Sam Yancy, B. C. Heard and E. L. Morse, all residents of Abilene, Kansas, for all the construction work upon the said bridge except the erection of the steel superstructure.

On or about June 15, 1921, the Yancy Construction Company began work and by August 17, 1921, had completed the greater portion of the work on the piers of the bridge.

[fol. 20] On August 17, 1921, the Kansas City Structural Steel Company secured a permit as required by law authorizing it to

do business in the State of Arkansas and on that date complied with the laws of the State of Arkansas with reference to foreign corporations engaging in business in this State in all respects.

The Kansas City Structural Steel Company has not received any payments of money from the Wilmot Road District by reason of its contract for the construction of said bridge. The legality of the Wilmot Road District, its organization and many other matters connected with the business of said District, are involved in a suit that is now progressing through the Court. The actual construction work done by the Yancy Construction Company was done by said Company as independent contractors, or rather as subcontractors, under the Kansas City Structural Steel Company. The Kansas City Structural Steel Company has fabricated the steel for the superstructure, at its plant in Kansas City, and that fabrication was in progress before and after August 17, 1921. The Steel Company has not maintained an office in the State of Arkansas prior to nor since August 10, 1921.

Prior to August 17, 1921, three shipments of steel to Wilmot, Arkansas, were made for use in the bridge. Said shipments consisted of: bolts, reinforced rods, steel piers, tubes, and angles, and this material was used in the construction work done by the Yancy Construction Company under its contract with the Kansas City Structural Steel Company.

It is agreed that the above statement of facts, together with the deposition of J. C. Kistler, constitutes all the testimony offered by both parties in this cause and this cause is by consent of the parties [fol. 21 & 22] submitted to the Court, a jury being waived.

J. R. Wilson, Prosecuting Attorney. J. W. House, Jr., Attorney for the Defendant."

This was all of the testimony that was introduced in this case both by the plaintiff and the defendant.

Whereupon the Court, after being fully and sufficiently advised in the premises, rendered the following judgment:

[Title omitted]

JUDGMENT—Omitted, printed side page — ante

[fol. 23] MOTION FOR A NEW TRIAL AND ORDER OVERRULING SAME
—Omitted; printed side page 23 ante

[fol. 24] IN CIRCUIT COURT OF ASHLEY COUNTY

ORDER SETTLING BILL OF EXCEPTIONS

And now comes the defendant in the above entitled cause and tenders the above and foregoing writing, containing all the evidence

and exceptions saved during the trial, as and for its Bill of Exceptions herein, and asks that the same be signed, sealed and ordered filed and made a part of the record in this cause, which is accordingly done.

Witness my hand as Judge of the Ashley Circuit Court, who presided at the trial of said cause on this the 7th day of Sept., 1922.
Turner Butler, Circuit Judge.

The above Bill of Exceptions is hereby approved.

J. R. Wilson, Prosecuting Attorney. J. W. House, Jr., Attorney for Defendant, Kansas City Structural Steel Company.

[File endorsement omitted.]

[fol. 25] IN CIRCUIT COURT OF ASHLEY COUNTY

[Title omitted]

CLERK'S CERTIFICATE

I, George Keener, Clerk of the Ashley Circuit Court, do hereby certify that the above and foregoing pages contain a true, perfect and complete transcript of all the pleadings and exhibits thereto, recorded entries and proceedings in the case of State of Arkansas, for the use and benefit of Ashley County v. Kansas City Structural Steel Company, as the same now appear on file and of record in my office, together with a statement of the costs incurred in said case.

In testimony whereof I have hereunto set my hand as such Clerk and affixed hereto the seal of said Court on this the 28th day of February, 1923.

George Keener, Clerk of the Circuit Court. (Seal.)

[fol. 26] IN SUPREME COURT OF ARKANSAS, DECEMBER 10, 1923

KANSAS CITY STRUCTURAL STEEL CO.

v.

STATE, USE ASHLEY COUNTY

OPINION

WOOD, J.:

This is an action by the appellee against the appellant. The appellee alleged that the appellant was a foreign corporation engaged in the business of building bridges, and that prior to the third day of August, 1917, it made a bid for the contract to do the bridge work

on the Wilmot Road District in Ashley County, Arkansas; that its bid was accepted and it entered into a contract with the road district for the building of bridges without first obtaining authority from the State of Arkansas to engage in such business in this State and without complying with the laws of the State applicable to such corporations.

The appellant, in its answer, specifically denied the allegations of the complaint and alleged that if it engaged in business in the State of Arkansas without complying with the laws in regard to foreign corporations, such business transacted by it was inter-state commerce and not subject to the regulation of the State laws; that if the laws of the State (Secs. 1825-1832 inclusive Crawford & Moses Digest) forbidding foreign corporations to do business in the State without complying with the laws therein prescribed be held to apply to the business of appellant, that such laws were repugnant to the commerce clause of the Constitution of the United States and therefore void.

The facts as set forth in an agreed statement of facts are as follows: "Kansas City Structural Steel Company is a corporation organized under the laws of the State of Missouri. On May 3, 1921, it executed a contract with the Wilmot Road District for the construction of a [fol. 27] steel bridge across Bayou Bartholomew, near the town of Wilmot, county of Ashley, State of Arkansas. The contract was signed at Hamburg, Ashley County, Arkansas, by representatives of the contracting parties, and contained a provision that it should not become effective until a bond to secure its faithful performance had been executed by the steel company. This bond was executed in Kansas City on May 5, 1921. On June 14, 1921, the defendant steel company sublet to the Yancey Construction Company of Abilene, Kansas, a partnership, the construction work upon the bridge except the erection of the steel superstructure. On or about June 15, 1921, the Yancey Construction Company began work on the bridge, and by August 17, 1921, had completed the greater portion of the work on the piers. On August 17, 1921, the Kansas City Structural Steel Company secured a permit, as required by law, authorizing it to do business in the State of Arkansas, and on that day complied with the laws of the State with reference to foreign corporations engaging in business within the State.

The Kansas City Structural Steel Company has not received any payments of money from the Wilmot Road District by reason of its contract for the construction of the bridge. The actual construction work done by the Yancey Construction Company was done by said company as independent contractors. The Kansas City Structural Steel Company fabricated the steel for its superstructure at its plant in Kansas City. Prior to August 17, 1921, three shipments of steel were made to Arkansas for use in the bridge, said shipments consisting of bolts, re-enforcing rods, steel piers, tubes and angles, and this material was used in construction work done by the Yancey [fol. 28] Construction Company under its contract with the Kansas City Structural Steel Company."

In addition to the above, it was shown that on July 21, 1921, the appellant shipped three cans of bridge paint weighing 200 pounds and also on July 2, 1921, had shipped two car loads of structural

steel and still another car load at another time, all material shipped prior to August 17, 1921. This paint and the car loads of structural steel were consigned to the appellant at Wilmot, Arkansas from Kansas City, Missouri.

Upon the above facts the trial court rendered a judgment in favor of the appellee against the appellant in the sum of \$1,000 from which is this appeal.

The facts are undisputed and they constitute the doing of business by appellant in this State contrary to the laws applicable to foreign corporations as contained in sections 1825-1832 inclusive, Crawford & Moses' Digest. It appears that appellant came into this State and bid on the contract for the construction of bridges in Wilmot Road District; that its bid was accepted and the contract entered into in this State for the construction of these bridges; that prior to the day when it obtained its license to do business in this State it had sublet a portion of the work, which it had contracted to do to a construction company, a partnership, in Abilene, Kansas; that before it was authorized to do business in this State appellant also shipped the structural steel necessary for the bridge work consigned to itself at Wilmot, Arkansas; that of this material the appellant furnished the Kansas Company such bolts, reinforcing rods, steel piers, tubes and angles as were necessary to enable it to perform its part of the work, all of [fol. 29] which it did and completed before the appellant secured its permit to do business in this State.

These acts separately (and certainly taken as a whole) looking toward the fulfillment of its contract to construct the bridges which was entered into, and to be performed, in this State constituted the doing of business in this State, and the court was correct in so holding. The appellant contends that these acts were wholly interstate in character and relies upon the cases of *Rose City Bottling Works v. Godechaux Sugars, Inc.*, 151 Ark. 269, and *L. D. Powell Co. v. Rountree, Ms. Op.*, Vol. 12 L. R. p. 688. Neither of these cases sustain appellant's contention. In *Rose City Bottling Works v. Godechaux Sugars, Inc.*, supra, a foreign corporation sold goods to a resident of this state and consigned the goods to its order at the buyer's place of business and the foreign corporation, through its local agent, negotiated and arranged with a third party whereby its agent should hold the goods until paid for. In that case we said: "If, therefore, the goods came into the State under shipper's order consignment, retaining its character as interstate, it follows that there was no change in the character of the transaction in the further arrangement between the parties stipulating the method of payment of the price. The transaction from inception to the end was continuous and interstate in its character, for the contract now under consideration related to the method of the payment of the price and did not constitute a new contract for the sale of the goods."

In the case of *Powell Co. v. Rountree*, supra, a foreign corporation, through its traveling agent, took an order from a party in this State [fol. 30] for certain books and the foreign corporation shipped the books to the purchaser under a contract by which the title was reserved in the seller until the purchase money was paid. The original purchaser, having failed to pay for the books, turned them over to

an attorney in payment of a fee. Later a representative of the foreign corporation claimed the books and the attorney having them in possession recognized the claim and offered to deliver the books to the agent of the foreign corporation. The latter resold these books to the attorney under a contract similar in form to the contract under which they were first purchased. We held that the first transaction was an interstate transaction and that the latter was but a continuation of the original interstate transaction and that the whole did not constitute the doing of business in this state by a foreign corporation contrary to our laws. Among other things, we said: "The books were not shipped into the State as sole and independent property of appellant for the purpose of selling them to the appellee or any other person. On the contrary, they were shipped into the State by appellant to McNeill on an order for future delivery, obtained by appellant's traveling agent. The McNeill contract clearly covered an interstate transaction. The recovery of the books under the McNeill contract amounted to a collection growing out of an interstate transaction. The collection was made in books instead of money, and we think the resale of them, in order to convert them into money, was a continuation of the interstate transaction."

The facts in the case at bar readily differentiate it from the doctrine of those cases. Here, the bid for the contract to build bridges [fol. 31] in the State and the entering into the contract to build those bridges were strictly intrastate acts. Likewise, the furnishing of the material to the Yancey Construction Company after the same was shipped to Wilmot, Arkansas, to the order of the appellant, was strictly an intrastate, and not an inter-state transaction. These transactions were intra-state and not inter-state transactions and constituted the doing of business in this State. In *Hogan v. Intertype Corporation*, 136 Ark. 52, there was a sale of machinery by a foreign corporation to a resident of this State and the machinery was shipped to the purchaser from another State to the shipper's order and was delivered by the seller to the buyer within this State. We held that this constituted an intra-state transaction. Among other things we said: "One test laid down by the Arkansas cases differentiating an inter-state transaction from an intra-state transaction is the ownership of the property after it arrives in the State. An inter-state transaction contemplates a consignor without and a consignee within a State, or vice versa." The facts of the case in hand are much stronger to show an intra-state transaction than were the facts in the case of *Hogan v. Intertype Corporation*, supra. But this is not the case, on the facts, of a resident of this State ordering goods of a foreign corporation, and the shipment of those goods by the foreign corporation to its own order in this State for delivery to the purchaser. Not at all. Here the facts warranted the trial court in finding, and evidently it did find, that appellant shipped the material necessary in the construction of this bridge to Wilmot and there established the emporium or warehouse, from which it furnished to the Yancey Construction Company all the material the [fol. 32] latter company required to do the work under its contract.

The facts bring this case within the principle announced by the

Supreme Court of the United States in *Brownig v. Waycross*, 233 U. S. 16; *General R. Signal Co. v. Virginia*, 246 U. S. 500, and *York Mfg. Co. v. Colley*, 247 U. S. 21, and that line of cases.
The judgment is correct, and it is affirmed.

[fol. 33]

IN SUPREME COURT OF ARKANSAS

SUBMISSION—November 26, 1924

The following causes being regularly called, come the parties thereto by their attorneys and solicitors, and said causes are submitted upon the transcripts of the records and the brief filed, and are by the Court severally taken under advisement, viz:—

* * * * *

7903. *Kansas City Structural Steel Company v. The State of Arkansas, Use, etc., Ashley County.*

* * * * *

IN SUPREME COURT OF ARKANSAS

[Title omitted]

JUDGMENT—Filed December 10, 1923

This cause came on to be heard upon the transcript of the record of the circuit court of Ashley County, and was argued by counsel, on consideration whereof it is the opinion of the Court that there is no error in the proceedings and judgment of said circuit court in this cause.

It is therefore considered by the Court that the judgment of said [fol. 34] circuit court in this cause rendered be, and the same is hereby, in all things affirmed with costs.

It is further considered that said appellee recover of said appellant all her costs in this Court in this cause expended, and have execution thereof.

IN SUPREME COURT OF ARKANSAS

ORDER OVERRULING PETITION FOR REHEARING—January 7, 1924

Rehearing Petitions Submitted

The petitions for rehearing filed in the following causes being called, they are now submitted with the responses and briefs filed, and are by the court severally taken under advisement, viz:

* * * * *

7903. Kansas City Structural Steel Company v. The State of Arkansas, Use Ashley County.

* * * * *

Rehearing Petitions Denied—January 14, 1924

Being fully advised, the petitions for rehearing filed in the following causes are by the Court severally overruled, viz:

* * * * *

7903. Kansas City Structural Steel Company v. The State of Arkansas, use Ashley County.

[fol. 35]

IN SUPREME COURT OF ARKANSAS

[Title omitted]

PETITION FOR REHEARING

Brief in Support of Petition

The appellant, Kansas City Structural Steel Company, respectfully prays the court to grant it a rehearing in this case and states:

Appellant understands the court to hold in its opinion in this case that a foreign corporation may not offer to do business in the state without first complying with the laws of the state with reference to transaction of business in the state by foreign corporations. It is stated in the opinion that "the bid for the contract to build bridges in the state and the entering into the contract to build these bridges is strictly an intra-state act."

It is respectfully submitted that the statute involved being penal in its character should not be so strictly and rigidly interpreted and applied. It is not conceivable that the intention of the act in question is to prohibit a foreign corporation from offering to engage in business in this state by bidding for a contract nor to prohibit it entering into a contract or agreement with parties in this state looking to the actual transaction of business in the state in the performance of the contract.

To require a foreign corporation to go through the various formalities of passing and filing resolutions, articles of incorporation [fol. 36] and the payment of license fees before seeking to secure business in the state is in many cases tantamount to prohibiting its engagement in business in the state because in these days of keen competition the time necessarily taken in the compliance with the statute would often, if not always, prohibit the securing of the business.

On the other hand it seems to us immaterial where the bid is made or where the contract is signed. It is for the benefit of local

interests that bids for business in the state and contracts to do business in the state are submitted and signed at the place where the work or business is to be done. That fact alone, however, is not sufficient to impress an exclusive intrastate character upon such acts. When the parties thereto are residents of different states, such acts are interstate in character because they are incidental and part of agreement and transactions between citizens of different states and, therefore, necessary incidents to interstate commerce, the control and regulation of which by either state would work an unjustifiable burden upon the free flow of commerce between the different states. "Commerce among the states is not a technical legal conception, but a practical one drawn from the course of business." *Stafford v. Wallace*, 42 Supreme Court Reporter 397. 23 A. L. R. 229; *York v. Collie*, 11 A. L. R. 611.

Furthermore, the contract in this case, as reflected by the agreed statement of facts, did not become effective upon the signature in the State of Arkansas and this by its express terms, but only until a bond to secure its performance has been executed by appellant and the bond was executed in Kansas City, Missouri.

[fol. 37] Nor was any actual construction work done in this state by the appellant or any of its agents. Such construction work as was done in the state was performed by independent contractors, residents of the State of Kansas. This concern, the Yancey Construction Company, a partnership, was authorized to come into the state and do this work. It violated none of the laws of the state in doing it. The contract between it and the appellant was not made in the State of Arkansas and in as much as the Yancey Company was an independent contractor, appellant exercised no control and took no part in the work done in the state. Appellant was not in the state in any capacity in the operations of the independent contractors.

Agreed statement shows that the appellant company is engaged in the manufacture and fabrication of steel parts for bridges and that this was made by appellant and shipped to its order at Wilmot, Arkansas, there delivered to the Yancey Construction Company. These transactions were a part of the contract between the Yancey Construction Company and appellant. We submit they are entirely interstate in character. Appellant certainly had the right to manufacture and sell and ship into the state of Arkansas the steel for use by the Yancey Construction Company. The mere fact that it was consigned to its order and that delivery to the Yancey Construction Company therefore took place within the state does not make such transactions interstate in character. That would seem to be the holding of this court in the case of *Hogan v. Intertype Corporation*, 136 Ark. 52, but that case, we submit, is long since discredited by the later decisions of this state and of the Supreme Court of the [fol. 38] United States. The case of *Powell Company v. Rountree*, Vol. 12, L. R. 688, directly overrules it; and also the decision of the United States Supreme Court in *Dhonke-Walker Manufacturing Company v. Bondurant*, 66 Law. Ed. 239. The mere delivery of

goods shipped in interstate commerce is an incident to the commerce and a necessary part thereof beyond the control of the state. It is respectfully submitted that, as to the transactions done by appellant and involved in this case, the laws of the State of Arkansas with reference to foreign corporations doing business within the state; namely, Sections 1825 to 1832 inclusive, Crawford & Moses' Digest of the Laws of Arkansas, are invalid because in conflict with the commerce clause of the Constitution of the United States and especially article 1, Sec. 8, Clause 3 thereof, and for this reason appellant respectfully prays the court to grant it a rehearing herein to the end that upon such rehearing its rights under the constitution of the United States may be preserved.

Respectfully submitted, Coleman, Robinson & House, for Appellant.

[fol. 39]

IN SUPREME COURT OF ARKANSAS

CLERK'S CERTIFICATE

I, W. P. Sadler, clerk of said court, do hereby certify that the foregoing is a true, full and complete transcript of the record and proceedings in the case of Kansas City Structural Steel Company, Appellant vs. State of Arkansas, for the use of Ashley County, Appellee, and also of the opinion of the court rendered therein, as the same now appears on file in my office.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said court at my office, in Little Rock, Arkansas, this April 24, 1924.

W. P. Sadler, Clerk of Supreme Court of Arkansas. (Seal of the Supreme Court of Arkansas.)

[fol. 40]

IN SUPREME COURT OF ARKANSAS

[Title omitted]

ASSIGNMENT OF ERRORS—Filed April 12, 1924

Now comes the Kansas City Structural Steel Company, a corporation, the plaintiff in error in the above cause, and respectfully submits that in the record, proceedings, decision and the final judgment of the Supreme Court of the State of Arkansas in the above entitled cause, there is manifest error in this;

First. The court erred in holding that the provisions of sections 1825 to 1832 inclusive of Crawford and Moses' Digest of the laws of the State of Arkansas as applied to the business of the plaintiff in error in this cause are not in conflict with the Constitution of

the United States, and in particular are not repugnant to article 1, section 8 of clause 3 of the Constitution of the United States.

Second. The court erred in holding and deciding that the business of the plaintiff in error involved in this cause was wholly intra-state, and therefore subject to regulation by the State of Arkansas.

[fol. 41] Third. The court erred in holding and deciding that the plaintiff in error by bidding upon a contract for public work, by signing a contract for such work within the State of Arkansas, and by consigning to its order from Kansas City, Missouri to Wilmot, Arkansas, certain structural materials to be used by a sub-contractor in the construction work, was engaged in doing business in the State of Arkansas in violation of the laws applicable to foreign corporations as contained in sections 1825 to 1832 inclusive of Crawford and Moses' Digest of the laws of the State of Arkansas.

Fourth. The court erred in holding and deciding that the plaintiff in error, a foreign corporation, by coming into the State of Arkansas to bid on a contract for the construction of a bridge, by entering into a contract within the State of Arkansas for the construction of a bridge, and by shipping into the State of Arkansas certain structural materials to be used by a sub-contractor of the plaintiff in error in the construction work, was engaged in intra-state commerce and in doing business within the State of Arkansas, although the plaintiff in error sub-let by contract entered into in Kansas City, Missouri, with a partnership, all the construction work upon the bridge done prior to the date the plaintiff in error obtained its license to do business in the State of Arkansas, and although the structural materials shipped by the plaintiff in error from Kansas City, Missouri to Wilmot, Arkansas to its order were intended for the use and were used by the sub-contractor in the work done by him.

[fol. 42] Wherefore, the said Kansas City Structural Steel Company, the plaintiff in error, prays that the judgment and decision aforesaid may be reversed and annulled, and that it may have such other and further relief as may be proper and just.

Cooper, Neel & Wright, Chas. T. Coleman, W. G. Riddick, Attorneys for Plaintiff in Error.

[File endorsement omitted.]

[Title omitted]

PETITION FOR WRIT OF ERROR—Filed April 12, 1924

To the Honorable Edgar A. McCulloch, Chief Justice of the Supreme Court of the State of Arkansas:

Your petitioner, the Kansas City Structural Steel Company, a corporation, hereby sets forth that on the 14th day of January A. D., 1923, the Supreme Court of the State of Arkansas made and entered a final order and judgment herein in favor of the State of Arkansas for the use and benefit of Ashley County against this petitioner, the Kansas City Structural Steel Company, in which final order and judgment and proceedings, had prior thereto in this cause, manifest error has occurred greatly to the damage of your petitioner.

That the said Supreme Court of the State of Arkansas is the highest court of said State of Arkansas in which a decision of this suit and this matter could be had.

That in the records and proceedings in this cause, it will appear that there was drawn in question the validity of Sections 1825 to 1832, inclusive, of Crawford & Moses' Digest of the Laws of the State of Arkansas on the ground of the repugnancy of said laws to the Constitution of the United States, and in particular to Article 1, Section 8, Clause 3 thereof, and the decision of the Supreme Court [fol. 44] of the State of Arkansas was in favor of the validity of the said laws of the State of Arkansas; all of which is fully apparent in the record and proceedings of the case and specifically set forth in the assignment of errors filed herewith.

Wherefore, your petitioner prays that the writ of error from the Supreme Court of the United States be issued in this behalf to the Supreme Court of the State of Arkansas for the correction of the errors so complained of; that the bond herewith presented be approved and that said bond and writ of error may operate as a supersedeas herein; that a transcript of the records, proceedings and papers in this cause, duly authenticated, be sent to the Supreme Court of the United States to the end that the errors complained of by your petitioner may be examined and corrected and said judgment reversed as, according to law and justice, should be done.

Dated this 2nd day of April A. D., 1924.

Kansas City Structural Steel Co., by O. C. Smith, Vice-President, Petitioner. Cooper, Neel & Wright, Chas. T. Coleman, W. G. Riddick, Attorneys for Petitioner.

[fol. 45] The writ of error, as prayed for in the foregoing petition, is hereby allowed this 12 day of April A. D., 1924, the writ of error to operate as a supersedeas, and the bond for that purpose is fixed at the sum of \$2,000.00.

Dated at Little Rock, Arkansas, this 12 day of April A. D. 1924.
 E. A. McCulloch, Chief Justice of the Supreme Court of
 the State of Arkansas.

[File endorsement omitted.]

[fols. 46 & 47] BOND ON WRIT OF ERROR FOR \$2,000—Approved
 and filed April 12, 1924; omitted in printing

[fol. 48] IN SUPREME COURT OF ARKANSAS

[Title omitted.]

WRIT OF ERROR—Filed April 12, 1924

The President of the United States of America to the Honorable
 Judges of the Supreme Court of the State of Arkansas, Greeting:

Because of the records and proceedings, as also in the rendition
 of the judgment of a plea which is in said court before you, or some
 of you, between the State of Arkansas for the use and benefit of
 Ashley County, plaintiff, and the Kansas City Structural Steel Com-
 pany, defendant, your court being the highest court of said state
 having jurisdiction to render judgment in the case; there was
 drawn in question the validity of Sections 1825 to 1832, inclusive,
 of Crawford & Moses' Digest of the Laws of the State of Arkansas
 on the ground of the repugnancy of said laws to the Constitution of
 the United States, and in particular to Article 1, Section 8, Clause
 3 thereof, and the decision was in favor of the validity of the said
 laws of the State of Arkansas, and there being manifest error in
 said decision greatly to the damage of the Kansas City Structural
 Steel Company, petitioner in error, and we being willing that if
 there is error it should be duly corrected, we do therefore command
 you, if judgment be therein given, that under the seal of your court
 you send the record and proceedings had in said cause to the Su-
 preme Court of the United States, together with this writ, so that
 [fol. 49] you have the same at Washington within thirty days of
 the date hereof, in the Supreme Court to be then and there held that
 the record may be inspected by said court and justice done.

Witness the Honorable William Howard Taft, Chief Justice of
 the Supreme Court, this 12th day of April, A. D., 1924.

Sid B. Redding, Clerk of the United States District Court for
 the Eastern District of Arkansas, by Gladys Stannard.
 (Seal of the District Court, Western Division, U. S. A.)

Allowed April 12, 1924. E. A. McCulloch, Chief Justice of the
 Supreme Court of the State of Arkansas.

[File endorsement omitted.]

[fol. 50]

IN SUPREME COURT OF ARKANSAS

[Title omitted.]

ORDER ALLOWING WRIT OF ERROR—Filed April 12, 1924

The above entitled matter coming on to be heard upon the petition of the plaintiff in error therein for a writ of error from the Supreme Court of the United States to the Supreme Court of the State of Arkansas, and upon examination of said petition and the record in said matter, and desiring to give petitioner an opportunity to present in the Supreme Court of the United States the questions presented by the record in said matter,

It is ordered that a writ of error be, and is hereby allowed to this court from the Supreme Court of the United States, and that the bond presented by said petitioner be, and the same is hereby approved.

E. A. McCulloch, Chief Justice of the Supreme Court of the State of Arkansas.

[File endorsement omitted.]

[fol. 51]

IN SUPREME COURT OF ARKANSAS

CERTIFICATE OF LODGMENT

I, W. P. Sadler, Clerk of said court, do hereby certify that there was lodged with me as such clerk on April 12, 1924, in the matter of the Kansas City Structural Steel Company v. State of Arkansas, for the use of Ashley County,

The original bond, of which a copy is herein set forth.

An original and copy each of the Writ of Error, Assignment of Errors, and prayer for reversal.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at my office, in Little Rock, Arkansas, this April 24, 1924.

W. P. Sadler, Clerk Supreme Court of Arkansas. (Seal of the Supreme Court of Arkansas.)

[fols. 52 & 53] CITATION—In usual form, showing service on J. Utley; filed April 12, 1924; omitted in printing

[fol. 54] IN SUPREME COURT OF ARKANSAS

RETURN TO WRIT OF ERROR

In obedience to the commands of the within writ, I herewith transmit to the Supreme Court of the United States, a duly certified transcript of the complete record and proceedings in the within entitled case, with all things concerning the same.

In witness whereof, I hereunto subscribe my name, and affix the seal of said Supreme Court of Arkansas, in the City of Little Rock, Arkansas, this April 24, 1924.

W. P. Sadler, Clerk Supreme Court of Arkansas. (Seal of the Supreme Court of Arkansas.)

Costs of Suit

Costs in Supreme Court, Appellee's Briefs.	\$15.00
Costs pursuant to writ of Error, for transcript.	16.00

Paid by plaintiff in error.

Endorsed on cover: File No. 30,313. Arkansas Supreme Court. Term No. 375. Kansas City Structural Steel Company, plaintiff in error, vs. The State of Arkansas for the use and benefit of Ashley County. Filed May 6th, 1924. File No. 30,313.



Office Supreme Court, U.
S. T. L. B. D.

APR 6 1925

WM. R. STANSBURY
CLERK

No. 54

IN THE

Supreme Court of the United States

KANSAS CITY STRUCTURAL STEEL COM-
PANY, PLAINTIFF IN ERROR.

VS.

THE STATE OF ARKANSAS FOR THE USE
AND BENEFIT OF ASHLEY COUNTY,
DEFENDANT IN ERROR.

BRIEF FOR PLAINTIFF IN ERROR.

ARMWELL L. COOPER,
ELISON A. NEEL,
J. W. HOUSE, JR.,
CHAS. T. COLEMAN,
JOE T. ROBINSON,

Attorneys for Plaintiff in Error.

No. 375.

IN THE

Supreme Court of the United States

KANSAS CITY STRUCTURAL STEEL COMPANY,
PLAINTIFF IN ERROR.

VS.

THE STATE OF ARKANSAS FOR THE USE
AND BENEFIT OF ASHLEY COUNTY,
DEFENDANT IN ERROR.

STATEMENT OF THE CASE.

This case is here upon a writ of error to the Supreme Court of Arkansas to reverse its judgment imposing a penalty upon the plaintiff in error for engaging in business in the State of Arkansas without first complying with the laws of that state with reference to foreign corporations. The opinion of the Arkansas Supreme Court is reported in 161 Ark. 483.

The statute of the State of Arkansas which is involved in this case is set out in Crawford & Moses' Digest of the Laws of the State of Arkansas, sections 1825 to 1832. The part of the statute pertinent to this case is as follows:

"Constitutional Provision. Foreign corporations may be authorized to do business in this state under such limitations and restrictions as may be prescribed by law. Provided, that no such corporation shall do any business in this state except while it maintains therein one or more known places of business and an authorized agent or agents in the same upon whom process may be served; and, as to contracts made or business done in this state, they shall be subject to the same regulations, limitations and liabilities as like corporations of this state, and shall exercise on other or greater powers, privileges or franchises than may be exercised by like corporations of this state, nor shall they have power to condemn or appropriate private property.

Authority To Do Business. Every company or corporation incorporated under the laws of any other state, territory, or country, including foreign railroad and foreign fire and life insurance companies, now or hereafter doing business in this state, shall file in the office of the Secretary of State of this state a copy of its charter or articles of incorporation or association or a copy of its certificate of incorporation, duly authenticated on and certified by the proper authority, together with a statement of its assets and liabilities and the amount of its capital employed in this state, and shall also designate its general office or place of business in this state, and shall name an agent upon whom process may be served.

"Filing Resolution Of Board Of Directors. Before authority is granted to any foreign corporation to do business in this state, it must file with the Secretary of State a resolution adopted by its board of directors, consenting that service of process upon any agent of such company in this state, or upon the Secretary of State of this state, in any action brought or pending in this

state, shall be a valid service upon said company; and if process is served upon the Secretary of State it shall be his duty at once to send it by mail addressed to the company at its principal office.

"Penalty For Failure To File Articles. Any foreign corporation which shall fail to comply with the provisions of this act, and shall do any business in this state, shall be subject to a fine of not less than \$1,000.00 to be recovered before any court of competent jurisdiction, and all such fines so recovered shall be paid into the general revenue fund of the county in which the cause of action shall accrue, and it is hereby made the duty of the prosecuting attorneys to institute said suits in the name of the state, for the use and benefit of the county in which the suit is brought, and such prosecuting attorney shall receive as his compensation one-fourth of the amount recovered; and as an additional penalty, any foreign corporation which shall fail or refuse to file its articles of incorporation or certificate as aforesaid can not make any contract in this state which can be enforced by it either in law or equity, and the complying with the provisions of this act after the date of any such contract, or after any suit is instituted thereon, shall in no way validate said contract."

A suit was brought by the state for the use of Ashley County under the above statute seeking to recover of the plaintiff in error the fine of \$1,000.00, upon the charge that it had engaged in business in the State of Arkansas without first complying with the laws of the state in respect to foreign corporations. Plaintiff in its answer denied that it had engaged in

business in the State of Arkansas, and further alleging that if it had transacted any business in said state the same was in inter-state commerce, and not subject to control or regulation by the state; that the laws of the State of Arkansas under which this action was brought, namely, Sections 1825 to 1832 of Crawford & Moses' Digest of the Laws of Arkansas, if held to apply to defendant's business in the circumstances of this case, were repugnant to the commerce clause of the Constitution of the United States and, therefore, unconstitutional (R. 3).

The case was submitted to the trial court upon an agreed statement and the deposition of one witness, the material facts being as follows:

The Kansas City Structural Steel Company, plaintiff in error, is a corporation organized under the laws of the State of Missouri. On May 3, 1921, it executed a contract with the Wilmot Road Improvement District for the construction of a steel bridge across the Bayou Batholomew, near the town of Wilmot, County of Ashley, State of Arkansas. The contract for the construction was signed at Hamburg, Ashley County, Arkansas, by representatives of the contracting parties. It contained a provision, however, that it should not become effective until a bond to secure its faithful performance had been executed by the Kansas City Structural Steel Company and this bond was executed at Kansas City on May 5, 1921.

On June 14, 1921, the plaintiff in error sublet to the Yancey Construction Company of Abilene, Kansas, a partnership, all of the construction work upon the bridge except the erection of the steel superstructure.

On June 15, 1921, the Yancey Construction Company began its work and completed the greater portion of it by August 17, 1921 (R. 9).

On August 17, 1921, the Kansas City Structural Steel Company complied with the laws of the State of Arkansas with reference to foreign corporations engaging in business in that state (R. 9 and 10).

The actual construction work done by the Yancey Construction Company was done by them as independent contractors. The Kansas City Structural Steel Company, plaintiff in error fabricated the steel for the super-structure of the bridge at its plant in Kansas City, and that manufacture was in progress before and after August 17, 1921. The plaintiff in error never maintained an office in the State of Arkansas either before or after August 17, 1921, but prior to that date it made three shipments of steel and bridge paint to Wilmot, Arkansas, from Kansas City, Missouri, which shipments were consigned by the plaintiff in error to itself. The materials were used by the Yancey Construction Company in the work they were doing upon the bridge (R. 10).

The plaintiff in error never received any payments of money from the Wilmot Road District by reason of its contract for the construction of the bridge (R. 10).

The trial court found that the Kansas City Structural Steel Company was a Missouri Corporation and that without qualifying to do business in the State of Arkansas as required by the laws of that state, it executed a contract with the Wilmot Road District in Ashley County, Arkansas, to construct a bridge; that the execution of said contract in the State of Arkansas and the shipment by the Kansas City Structural Steel Company of bridge materials for delivery to itself at Wilmot, Arkansas, constituted doing business in the state without authority of law (R. 3).

A judgment was entered against the plaintiff in error in the sum of \$1,000.00 which judgment was affirmed on appeal to the Supreme Court of Arkansas. That court said:

"The appellant, in its answer, specifically denied the allegations of the complaint and alleged that if it engaged in business in the State of Arkansas without complying with the laws in regard to foreign corporations, such business transacted by it was inter-state commerce and not subject to the regulation of the state laws; that if the laws of the state (Secs. 1825-1832 inclusive, Crawford & Moses' Digest) forbidding foreign corporations to do business in the state without complying with the laws therein prescribed be held to apply to the business of appellant, that such laws were repugnant to the commerce clause of the Constitution of the United States and therefore void.

"The facts are undisputed and they constitute the doing of business by appellant in this state contrary to the laws applicable to foreign corporations as contained in sections 1825-1832

inclusive, Crawfords and Moses' Digest. It appears that appellant came into this state and bid on the contract for the construction of bridges in Wilmot Road District; that its bid was accepted and the contract entered into in this state for the construction of these bridges; that prior to the day when it obtained its license to do business in this state it had sublet a portion of the work, which it had contracted to do to a construction company, a partnership, in Abilene, Kansas; that before it was authorized to do business in this state appellant also shipped the structural steel necessary for the bridge work consigned to itself at Wilmot, Arkansas; that of this material the appellant furnished the Kansas Company such bolts, reinforcing rods, steel piers, tubes and angles as were necessary to enable it to perform its part of the work, all of which it did and completed before the appellant secured its permit to do business in this state.

"These acts separately (and certainly taken as a whole) looking toward the fulfillment of its contract to construct the bridges which was entered into, and to be performed, in this state constituted the doing of business in this state, and the court was correct in so holding."

A petition for a rehearing on behalf of plaintiff in error being denied by the lower court, the case is here upon a writ of error (R. 16).

ERRORS RELIED UPON.

"First. The court erred in holding that the provisions of sections 1825 to 1832 inclusive of Crawford & Moses' Digest of the laws of the State of Arkansas as applied to the business of the plaintiff in error in the cause are not in conflict with the Constitution of the United States, and in particular are not repugnant to article 1, section 8 of clause 3 of the Constitution of the United States.

"Second. The court erred in holding and deciding that the business of the plaintiff in error involved in this cause was wholly intrastate, and therefore subject to regulation by the State of Arkansas.

"Third. The court erred in holding and deciding that the plaintiff in error by bidding upon a contract for public work by signing a contract for such work within the State of Arkansas, and by consigning to its order from Kansas City, Missouri to Wilmot, Arkansas, certain constructural materials to be used by a subcontractor in the construction work, was engaged in doing business in the State of Arkansas in violation of the laws applicable to foreign corporations as contained in sections 1825 to 1832 inclusive of Crawford and Moses' Digest of the laws of the State of Arkansas.

"Fourth. The court erred in holding and deciding that the plaintiff in error, a foreign corporation, by coming into the State of Arkansas to bid on a contract for the construction of a bridge, by entering into a contract within the State of Arkansas for the construction

of a bridge, and by shipping into the State of Arkansas certain structural materials to be used by a sub-contractor of the plaintiff in error in the construction work, was engaged in intra-state commerce and in doing business within the State of Arkansas, although the plaintiff in error sub-let by contract entered into in Kansas City, Missouri, with a partnership, all the construction work upon the bridge done prior to the date the plaintiff in error obtained its license to do business in the State of Arkansas, and although the structural materials shipped by the plaintiff in error from Kansas City, Missouri to Wilmot, Arkansas, to its order were intended for the use and were used by the sub-contractor in the work done by him."

ARGUMENT.

In its opinion in this case, the Supreme Court of Arkansas said: "Here, the bid for the contract to build bridges in the state, and the entering into the contract to build those bridges were strictly intrastate acts. Likewise the furnishing of material to the Yancey Construction Company after the same was shipped to Wilmot, Arkansas, to the order of appellant (plaintiff in error) was strictly an intrastate and not an interstate transaction. These transactions were intrastate and not interstate transactions, and constituted the doing of business in this state" (Rec. 14).

It is respectfully submitted that if the effect of the statute of the State of Arkansas involved in this case is to prohibit a corporation of another state from offering to engage in business in Arkansas by bidding for a contract, or to prohibit its entering into a contract or agreement with parties in the State of Arkansas looking to the subsequent transactions of business in the state in the performance of the contract, then the statute is in conflict with the commerce clause of the Federal constitution. (The act of submitting a bid upon work to be done in a state other than that of its domicile and the execution of a contract by a foreign corporation to do the work bid upon, regardless of where the bid was made or the contract executed, are certainly agreements and transactions between citizens of different states and therefore necessarily part of

interstate commerce. To require a corporation of one state to go through the various formalities of passing and filing resolutions and articles of incorporation, the payment of license fees and the appointment of agents in another state, before seeking to secure business in that state is in many cases tantamount to prohibiting its engaging in business in the latter state, because in these days of keen competition the time necessarily taken in the compliance with the statute would often, if not always, prohibit the securing of the business sought.

"A corporation of one state may go into another without obtaining the leave or license of the latter for all of the legitimate purposes of such (interstate) commerce, and any statute of the latter state which obstructs or lays a burden on the exercise of this privilege is void under the commerce clause."

Dahnke-Walker Milling Company v. Bondurant, 257 U. S. 282; 42 Sup. Ct. Rep. 106; 66 L. Ed. 244.

In the above case, this court in discussing what constitutes interstate commerce said:

"In *Kidd v. Pearson*, 128 U. S. 1, 20, 32 L. Ed. 346, 350, 2 Inters. Com. Rep. 232, 9 Sup. Ct. Rep. 6, it was tersely said: 'Buying and selling and the transportation incidental thereto constitute commerce.' In *United States v. E. C. Knight Co.*, 156 U. S. 1, 13, 39 L. Ed. 325, 329, 15 Sup. Ct. Rep. 249, 'contracts to buy, sell, or exchange goods to be transported among the several states' were declared 'part of interstate trade or commerce.' And in *Addyston Pipe & Steel Co.*

v. *United States*, 175 U. S. 211, 241, 44 L. Ed. 136, 147, 20 Sup. Ct. Rep. 96, the court referred to the prior decisions as establishing that 'interstate commerce consists of intercourse and traffic between the citizens or inhabitants of different states, and includes not only the transportation of persons and property and the navigation of public waters for that purpose, but also the purchase, sale, and exchange of commodities.' In no case has the court made any distinction between buying and selling, or between buying for transportation to another state and transporting for sale in another state. Quite to the contrary, the import of the decisions has been that if the transportation was incidental to buying or selling, it was not material whether it came first or last."

And in the case of *Stafford v. Wallace*, 258 U. S. 495.

✓ "Commerce among states is not a technical, legal conception but a practical one drawn from the course of business."

In the *Dahnke-Walker Milling Company* case, *supra*, the milling company, a Tennessee corporation, went into the State of Kentucky and there executed contracts for the purchase of grain which were to be performed in Kentucky, but because of the fact that the grain was purchased for shipment to the milling company's mill in Tennessee, this court said that the execution and performance of the contracts in the State of the United States was involved in the contract executed in the case of *International Text Book Company v. Pigg*, Kentucky was a part of interstate commerce. And in State of Kansas, one of the parties being a citizen of

that state, and the other a Pennsylvania corporation, the object of the contract being the instruction of a resident of Kansas by lessons sent through the mails from Pennsylvania. The only transportation involved was that of sending instruction papers and text books from Pennsylvania to Kansas. This court held the execution of such a contract to be a part of interstate commerce. So in the present case the bidding for the contract in Arkansas and its subsequent execution there by the plaintiff in error were, in the words of the court, "intercourse and traffic between citizens or inhabitants of different states," and they were therefore wholly interstate in character.

This was also true of the contract between the plaintiff in error, a Missouri corporation, and the independent contractor, the Yancey Construction Company, a Kansas partnership. The only other acts mentioned by the Supreme Court of Arkansas as constituting interstate business were the various shipments of structural steel and paint which were made by the plaintiff in error. The transportation of these articles was of course interstate commerce, and, that being true, their sale and delivery were also interstate in character and that character is not changed by the fact that the goods so shipped were consigned to the order of plaintiff in error instead of to the Yancey Construction Company. The interstate character of the commerce between the plaintiff in error and its sub-contractor, the Yancey Construction Company, embrace

Donneborn Bros

not only the transportation of the materials from the State of Missouri to the State of Arkansas, but also the sale of the materials wherever it was made, and the delivery to the Yancey Construction Company, although it was made in the State of Arkansas.

A statement of the transactions engaged in by the plaintiff in error will show that it was not subject to fine by the State of Arkansas. A Missouri corporation sends a representative into the State of Arkansas to bid for a contract to construct a bridge. Its bid is accepted and a contract for the construction work is executed in the State of Arkansas. The contract involves the construction of foundation and piers for the bridge, which of course is to be done at the location of the bridge in the State of Arkansas. It also involves the manufacture in the State of Missouri, and the shipment to the State of Arkansas of the steel superstructure.

The Missouri corporation enters into a contract with a Kansas partnership to construct the foundation and piers of the bridge. This contract is not made in Arkansas, but it is performed in that State by the Kansas partnership as an independent contractor. The Missouri corporation is not present, and does not engage in the actual construction work, but it sells and ships to its sub-contractors certain structural steel and bridge paint. These materials are shipped from Kansas City, Missouri, to Wilmott, Arkansas, consigned to the order of the shipper, the Missouri corporation. The delivery

of these materials to the partnership takes place in the State of Arkansas. When the independent contractor has completed the construction work for the piers of the bridge, the steel company complies with the laws of the State of Arkansas in preparation for entering that state and performing the work reserved for it to do.

There is nothing in the laws of the State of Arkansas which prohibits the Kansas City partnership from coming into the state and doing the work which it did. The plaintiff in error, the Missouri corporation, did not in fact engage in any business whatever within the state. It is respectfully submitted that the judgment of the Supreme Court of Arkansas be reversed.

ARMWELL L. COOPER,
ELLISON A. NEEL,
CHAS. T. COLEMAN,
JOE T. ROBINSON,
J. W. HOUSE, JR.,
Attorneys for Plaintiff in Error.



No. 375.

IN THE

Supreme Court of the United States

KANSAS CITY STRUCTURAL STEEL Co.....*Plaintiff in Error,*

v.

THE STATE OF ARKANSAS FOR THE USE AND BENEFIT OF
ASHLEY COUNTY*Defendant in Error.*

BRIEF FOR DEFENDANT IN ERROR.

STATEMENT OF THE CASE.

The State of Arkansas brought this action for the use and benefit of Ashley County against the Kansas City Structural Steel Company. The steel company was a foreign corporation which had engaged in business in the State of Arkansas without first complying with the laws of this State with reference to foreign corporations, obtaining a permit from the Secretary of State, and naming and designating an agent upon whom service might be had in this State.

The circuit court of Ashley County, Arkansas, rendered a judgment against the Kansas City Structural Steel Company in the sum of \$1,000.00, and that judgment was later affirmed by the Supreme Court of Arkansas.

Prior to the 3rd of August, 1923, the Kansas City Structural Steel Company, a corporation engaged in the building of bridges, made a bid for the contract to *do* the bridges in the Wilmot Road District in Ashley County, Arkansas, and the Kansas City Structural Steel Company being the best bidder, its bid was accepted and a contract was

entered into for the building of the bridges; the defendant being at all times a foreign corporation, and had not obtained authority in the manner prescribed by the law of the State of Arkansas to engage in business within this State (R. 1-2).

The defendant made a formal denial of these allegations, and claimed that the business done by the bridge company was interstate commerce not subject to the laws of the State of Arkansas as set out in section 1825-32 inclusive of Crawford & Moses' Digest of the Laws of the State of Arkansas, and the bridge company contended that, if the provisions of our statute were in conflict with its actions, our statutes were repugnant to the commerce clause of the Constitution of the United States (R. 2-3).

J. C. Kistler, agent for the Missouri Pacific Railroad Company at Wilmot, Arkansas, received three shipments at Wilmot, Arkansas; these shipments were made by the Kansas City Structural Steel Company. The freight bills show the shipment of July 21, 1921, of three cans of bridge paint weighing 200 pounds, and on July 2, 1921, a shipment of structural steel weighing 41,300 pounds. Both these shipments were consigned from the Kansas City Structural Steel Company of Kansas City to the Kansas City Structural Steel Company at Wilmot, Arkansas. One more car of steel was shipped by the bridge company to itself at Wilmot, Arkansas, before the company obtained a permit, but the witness could not find his record on that (R. 5-9).

On May 3, 1921, the Kansas City Structural Steel Company, a corporation organized under the laws of the State of Missouri, executed a contract with the Wilmot Road District for the construction of a steel bridge across Bayou Bartholomew near the town of Wilmot, in Ashley County, Arkansas; the contract was signed at Hamburg, Ashley County, Arkansas, and the bond of the bridge company was executed on May 5, 1921. The contract was completed and became effective on and after May 5, 1921.

The Kansas City Structural Steel Company claims to have sublet to the Yancey Construction Company of Abilene, Kansas, a partnership, the construction work upon the bridge, except the erection of a steel superstructure, and on or about June 15, 1921, they say that the Yancey Construction Company began work on the bridge and by August 17, 1921, had completed the greater portion of the piers.

On August 17, 1921, the Kansas City Structural Steel Company secured a permit to do business in Arkansas, and

complied with the law with reference to foreign corporations engaging in business within this State. It is also claimed by the Kansas City Structural Steel Company that they fabricated the steel for its superstructure at its plant in Kansas City, and that prior to August 17, 1921, three shipments were made to Arkansas for use in the bridge, said shipments consisting of bolts, reenforcing rods, steel piers, tubes and angles, and this material was used in the construction work done by the Yancey Construction Company under its contract with the Kansas City Structural Steel Company (R. 9-10).

ARGUMENT.

Plaintiff in error admits that it came into the State, signed a written contract on May 3, which became effective after the bond was executed on May 5, 1921. Plaintiff in error contends that in the performance of this contract it was required to do and perform acts, some of which were intrastate, such as the active work of building the bridge, and interstate, such as the manufacture and shipment of steel structures and materials to the point at which the bridge was to be erected.

The manufacture and shipment of the steel materials to the point at which the bridge was to be erected should not be construed and treated as interstate commerce under the facts in this case. The defendant did many acts before securing permit to do business other than such acts as were wholly interstate.

The three shipments of steel, made prior to August 17, 1921, for use in the bridge, consisting of bolts, reenforcing rods, steel piers, tubes and angles, and used in the construction by the Yancey Construction Company, were not shipped to the Yancey Construction Company. The record is that these three shipments were directed and delivered to the Kansas City Structural Steel Company at Wilmot, Arkansas. The Yancey Construction Company used this material in the bridge long before the Kansas City Structural Steel Company secured a permit to do business in Arkansas. But two conclusions can be drawn from the action of the parties. One is, that the Kansas City Structural Steel Company had to put in this material and assist the independent contractors by bringing the material to Wilmot and putting it into the bridge. The other is, that the Kansas City Structural Steel Company shipped this material to itself at Wilmot, Arkansas, and then sold it to the Yancey Construction Company for use in the bridge, and the sale must necessarily have occurred in Ashley County, Arkansas, or was completed there by delivery.

If either of these conclusions is correct, then it is logical to conclude that the Kansas City Structural Steel Company, as a part of its contract with the Yancey Construction Company, agreed to furnish these three carloads of steel and the three cans of paint, and in pursuance of that part of its agreement, shipped the steel and paint to Wilmot, Arkansas, not to the order of the Yancey Construction Company but to the Kansas City Structural Steel Company, and they delivered all this material, consisting of bolts, reenforcing rods, steel

piers, tubes, and angles, and the three cans of paint to the Yancey Construction Company.

The facts are undisputed, and they constitute the doing of business by plaintiff in error in the State of Arkansas, contrary to the laws applicable to foreign corporations as contained in sections 1825 to 1832 inclusive, Crawford & Moses' Digest.

The plaintiff in error came into this State and bid on the contract for the construction of bridges in Wilmot Road District. Its bid was accepted and the contract entered into in this State, for the construction of those bridges; prior to the day when it obtained its license to do business in this State it had sublet a portion of the work it had contracted to do, to a construction company, a partnership, in Abilene, Kansas; before it was authorized to do business in this State, the plaintiff in error shipped the structural steel necessary for the bridge work consigned to itself at Wilmot, Arkansas; of this material, plaintiff in error furnished the Yancey Company such bolts, reenforcing rods, steel piers, tubes and angles as were necessary to enable it to perform its part of the work, all of which it did and completed before the plaintiff in error had secured its permit to do business in Arkansas.

These acts separately (and certainly taken as a whole) looking toward the fulfillment of its contract to construct the bridges which was entered into and to be performed in this State, constituted the doing of business in this State.

The plaintiff in error contends that these acts were wholly interstate in character, and in the State courts relied upon the cases of *Rose City Bottling Works v. Godchaux Sugars, Inc.*, 151 Ark. 269.

And also the case of *Powell Co. v. Rountree*, MS. opinion, Vol. 12, at page 688; but neither of these cases in any way sustain the contention of plaintiff in error. In *Rose City Bottling Works v. Godchaux Sugars, Inc.*, *supra*, a foreign corporation sold goods to a resident of this State and consigned the goods to its order at the buyer's place of business, and the foreign corporation, through its local agent, negotiated and arranged with a third party whereby its agent should hold the goods until paid for. In that case the State court held: "If, therefore, the goods came into the State under shipper's order consignment, retaining its character as interstate, it follows that there was no change in the character of the transaction between the parties stipulating the

method of payment of the price. The transaction from inception to the end was continuous and interstate in its character, for the contract under consideration related to the method of the payment of the price and did not constitute a new contract for the sale of the goods" (R. 13).

In the case of *L. D. Powell Company v. Rountree, supra*, a foreign corporation, through its traveling agent, took an order from a party in Arkansas for certain books, and the foreign corporation shipped the books to the purchaser under a contract by which the title was reserved in the seller until the purchase money was paid. The original purchaser, having failed to pay for the books, turned them over to an attorney in payment of a fee. Later a representative of the foreign corporation claimed the books, and the attorney having come in possession, recognized the claim and offered to deliver the books to the agent of the foreign corporation. The latter resold these books to the attorney under a contract similar in form to the contract under which they were first purchased.

The State court held that the first transaction was an interstate transaction, and that the latter was but a continuation of the original interstate transaction, and that the whole did not constitute the doing of business in the State by foreign corporation contrary to our laws * * *.

The facts in this case differentiate it from the doctrine of these cases and of the other cases upon which the plaintiff in error now relies. Here, the bid for the contract to build bridges in the State and the entering into the contract to build these bridges were strictly intrastate acts. Likewise, the furnishing of the material to the Yancey Construction Company after the same was shipped to Wilmot, Arkansas, to the order of the plaintiff in error, was strictly an intrastate and not an interstate transaction.

In the case of *Hogan v. Intertype Corporation*, 136 Ark. page 52, there was a sale of machinery by foreign corporation to a resident of Arkansas, and the machinery was shipped to the purchaser from another State to the shipper's order and was delivered by the seller to the buyer within this State. The State court held that this constituted an intrastate transaction.

"One test laid down by the Arkansas cases differentiating an interstate transaction from an intrastate transaction is the ownership of the property after it arrives in the State. And an interstate transaction contemplates a consignor without, and a consignee within, a state or vice versa."

The facts of this case are much stronger to show an intrastate transaction than are the facts of *Hogan v. Inter-type Corporation, supra*. But this is not the case on the facts, of a resident of this State ordering goods of a foreign corporation, and the shipment of these goods by the foreign corporation to its own order in this State for delivery to the purchaser. Not at all. The facts warranted the State courts in finding that plaintiff in error shipped the material necessary to the construction of this bridge to Wilmot, and they established the emporium or warehouse from which to furnish to the Yancey Construction Company all the material the latter company required to do the work under the contract. The facts bringing this case within the principles announced by the Supreme Court of the United States in the case of *Browning v. Waycross*, 233 U. S. 16; *General Railway Signal Company v. Virginia*, 246 U. S. 500, and *York Mfg. Co. v. Colley*, 247 U. S. 21, and that line of cases.

Under our statute, "any foreign corporation which shall fail to comply with the provisions of this act, and shall do any business in this State, shall be subject to a fine of not less than \$1,000, to be recovered before any court of competent jurisdiction * * *. Act 313, Acts 1907, 744."

The phrase, "to carry on," when applied to business, is well settled. In Worcester's Dictionary the definition is, "To prosecute, to help forward, to construe, as 'to carry on business,' " etc.

The obvious intention of this section of our statute is that no foreign corporation shall begin any business in the State with the purpose of pressing or carrying it out until it has filed a certificate designating the principal place where the business of the corporation shall be carried on in the State, and naming an authorized agent residing at such principal place of business on whom process may be served."

In the case of *General Railway Signal Company v. Commonwealth*, 87 So. E. Rept., page 598, interstate commerce is defined as follows:

"Defendant, a foreign corporation, engaged in the manufacture of signaling devices for use on railroads, had its place outside of the State, contracted to equip a railroad company located entirely within the State with such devices. The work was done in the State by skilled laborers, with whom contracts were made outside, and the material was consigned by defendant to its own order within the State."

Held: That defendant was not a mere seller of property, and the transaction did not constitute interstate commerce, but its property, on delivery to its own order in the State, became part of the general property and subject to taxes, so it was doing business within the State, and was liable to all provisions of Code 1904, section 1104, requiring the designation of a process agent and the filing of a certificate showing the payment of the fee required by law before foreign corporations may do business in the State. The State may impose whatever condition it desires as a condition to the foreign corporation doing business within the State, and therefore the provision of a license tax placed upon the foreign corporation's capital stock is not a burden on interstate commerce; its interstate business being entirely separate from its intrastate business.

87 S. E., page 598.

The following is very pertinent to the abstract principle involved in this action:

"It is claimed for the defendant that the main purpose of the transaction on the part of the defendant company was the sale of its manufactured products, and the transaction is alleged to be similar to the ordinary sale of goods by dealers in our State to a principal in another State, and the transportation of the goods so sold in interstate commerce to the principal."

"Of course, we have no intention of questioning the authority of that case or of the cases following it, of which it is prototype. The case at bar, however, cannot be brought within the law they establish. The facts of this case show that the object of the Southern Railway Company, the purchaser, was to secure the erection of permanent structures upon its right-of-way, and not the purchase of goods to be transferred in interstate commerce. In this transaction the interstate commerce started when the machinery shipped from the factory in New York was delivered, not to the Southern Railway, but to the defendant, in Virginia; it then became a part of the property located in Virginia still owned by the defendant, liable to State taxation, and no longer protected by the commerce clause of the Constitution."

It is well established that if such material had been brought into this State for the purpose of storage it would be liable to State taxes, and surely it follows that if, after the transaction was ended, its owner changed it from personal property into real estate by building it into permanent

structures, such a disposition of its property in this State is not interstate commerce.

Coal sent by the owners in Pennsylvania to their agents in New Orleans to be sold for their account, upon its arrival becomes a part of the general mass of property in Louisiana, and is subject to taxation in common with all other property and in precisely the same manner.

Brown v. Houston, 114 U. S. 622.

A license tax imposed upon meat packing houses for selling meat brought into the State in interstate commerce, is not a burden upon interstate commerce."

200 U. S. 226.

There is a wealth of authorities cited in the case above referred to, and the principles announced are so sound and the facts referred to so similar that it becomes an authority in this case and settles the issues, without any serious question, in favor of Ashley County.

87 S. E. R. page 598, and authorities there cited.

In the case of *Fort Worth Glass and Sand Company v. H. R. Smythe Company*, quoting from syllabi:

"The construction of the glass factory, including the furnishing of material and labor, constituted the TRANSACTION OF BUSINESS WITHIN—Revised Statutes of 1895, Art. 745, requiring foreign corporations to obtain a permit to transact business in the State, though the contract was made outside the State.

"The construction of a glass factory by a foreign corporation did not constitute interstate commerce, where the necessary labor and part of the material was obtained within the State.

"Clearly, a foreign corporation desires to, and does, transact business in Texas when it undertakes, in its corporate capacity, 'to build' and 'complete,' furnishing all material and labor, and receiving a lump sum as pay therefor, gas producers at the plant of the Fort Worth Company, Fort Worth, Texas."

The general rule that a foreign corporation is doing, transacting, carrying on, or engaging in business in a State, within the meaning of the statutes under consideration, by transacting therein some substantial part of its ordinary

business, is not altered by the fact that such transactions constitute interstate or foreign commerce.

See 217 U. S. 91; 27 L. R. A., U. S. 493.

See Corpus Juris, 14 A Sec. 3992.

The facts in this case show beyond a doubt that the acts of the Kansas City Structural Steel Company, plaintiff in error, prior to August 17, 1921, constitute doing business within the State of Arkansas, and that the business was intrastate and not interstate, and that the judgment of the Supreme Court of Arkansas was correct and should in all things be affirmed.

J. R. WILSON,

Attorney for Defendant in Error.